

The claimant, Bruce Harris, operated a business known as Home Helpers. He started the business in 1994 and had no employees. He did painting, landscaping, remodeling, and other jobs people hired him to do around their homes. At the time of the accident involved here, claimant was working for his parents remodeling and turning a house next door into a

garage. In exchange for the work, claimant's parents were providing housing for claimant and his wife. Claimant's parents were to pay claimant an additional approximately \$3,000 when the job was completed. On October 8, 1996, while performing work on this project for his parents, the arm of a skid loader struck claimant's head and claimant was killed.

As a self-employed individual, claimant would not be covered under the Kansas Workers Compensation Act unless he elected to be covered. K.S.A. 44-542a provides:

Each individual employer, partner or self-employed person may elect to bring himself or herself within the provisions of the workmen's compensation act, by securing and keeping insured such liability in accordance with clause (1) of subsection (b) of K.S.A. 44-532. Such insurance coverage shall clearly indicate the intention of the parties to provide coverage for such employer, partner or self-employed person. When such election is made, the insurance carrier or its agent shall cause to be filed with the director a written statement of election to accept thereunder so that such employer, partner or self-employed person is treated as an employee for the purposes of the workmen's compensation act pursuant to such election. (*Emphasis added.*)

Nothing in the record indicates a formal election was ever filed with the Director. But in February 1996 claimant applied for workers compensation insurance under the assigned risk plan. The resulting insurance policy covering the period February 6, 1996, to February 6, 1997, Joint Exhibit 1 to the regular hearing, is a workers compensation and employer's liability policy. The premium is \$750 annually. The insured is defined in the general section by referring to item 1 on the information page as follows:

You are insured if you are an employer named in item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

Item 1 on the Information Page then states:

1. Insured and Mailing address	
HOME HELPERS	Insured is: INDIVIDUAL
BRUCE HARRIS, PROPRIETOR	
4347 BARTLOW	
WICHITA	KS 67217

The application for insurance is to be construed with the policy to determine the intent of the parties. *Lightner v. Centennial Life Ins. Co.*, 242 Kan. 29, 744 P.2d 840 (1987). In this case, the application shows claimant had no employees. In the section relating to "PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED" claimant is shown as the owner and in the category "INC/EXC" the abbreviation "Exc." is typed.

The Board has concluded the parties did not intend to provide coverage for claimant as an employee. Two factors suggest a contrary conclusion. First, if claimant was not to be insured as an employee, the \$750 premium was paid for a policy that did not have any

potential of actually providing workers compensation benefits. He had no other employees. Second, the authors of the policy were obviously aware of the potential ambiguity of the term "insured." They specifically provided for partnerships by stating that in the case of a partnership, "you are insured, but only in your capacity as an employer of the partnership's employees." They could have similarly provided that in the case of an individual insured, the individual was insured only in his/her capacity as an employer of other individuals.

Nevertheless, the Board agrees with the conclusion reached by the ALJ that the policy does not insure the claim made here. First, the exclusion of claimant on the application is clear. Even though only an abbreviation is used, no other reasonable interpretation can be given. Second, K.S.A. 44-542a requires that, in cases where the purchase of insurance is to be an election to be covered by the Act, the insurance coverage must clearly state the intention of the parties. In this case, the insurance coverage certainly does not clearly state the intention to elect coverage for claimant as an employee. In fact, the policy, construed together with the application, states claimant is not covered as an employee.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on November 30, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jack Shelton, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director